UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

GOLF VIEW MANOR NURSING HOME, INC.

Employer

and

Case 6-RC-11745

TEAMSTERS LOCAL UNION NO. 261 a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Patricia Daum and JoAnn Dempler, hearing officers of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.[1]

Upon the entire record[2] in this case, the Regional Director finds:

1. The hearing officers' rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

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[1] Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 l4th Street, N.W., Washington, D.C. 20570-000l. This request must be received by the Board in Washington by December 30, 1999.

[2] The Employer timely filed a brief in this matter which has been duly considered by the undersigned. The Petitioner and the Intervenor did not file briefs in this matter. See footnote 3.

3. The labor organizations involved[3] claim to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(l) and Section 2(6) and (7) of the Act.

The Petitioner seeks to represent a unit consisting of all regular full-time and regular part-time registered nurses (herein called "RNs") and licensed practical nurses (herein called "LPNs") employed by the Employer at its Aliquippa, Pennsylvania, facility, excluding all office clerical employees and guards, other professional employees and supervisors as defined in the Act and all other employees. The Employer, contrary to the Petitioner, contends that the RNs[4] and LPNs[5] (herein collectively called "nurses") do not constitute an appropriate unit because they are statutory supervisors.[6] There are approximately nine RNs and LPNs in the petitioned-for unit.[7] There is no history of collective bargaining for any of the employees involved herein.[8]

The Employer is engaged in the operation of a 67 bed skilled nursing facility in Aliquippa, Pennsylvania. The facility has two wings which are relatively identical in function. There is always an RN on duty in one wing and one or two LPNs on duty in the other wing.

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[3] On the second day of the hearing in this matter, Al J. Smith, Jr., an organizer for District 1199P, Service Employees International Union, AFL-CIO, CLC, entered an appearance and made a Motion to Intervene in this matter. This motion was granted by the hearing officer based on a showing of interest by authorization cards. The Intervenor left the hearing in the middle of the second day and thus did not take an active role in the proceeding during the rest of that day.

[4] At the hearing, the parties stipulated, and I find, that the RNs are professional employees, and as such, will vote in a self-determination election pursuant to the principles set forth in Sonotone Corporation, 90 NLRB 1236 (1950) should they be found not to be supervisors within the meaning of the Act.

[5] The record reflects that the work performed by the LPNs and RNs is virtually identical.

[6] The Intervenor did not state its position with regard to the appropriate unit.

[7] There are three or four full-time RNs, two part-time RNs, two full-time LPNs and two part-time LPNs.

[8] The Intervenor currently represents a unit of the Employer's service and maintenance employees.

The facility is under the overall supervision of administrator Judith Young. Reporting to Young are the heads of various departments, including Director of Nursing (herein called the "DON") Kathy Wilson and the Assistant Director of Nursing (herein called the "ADON") Mary Ann Smelko.[9] Wilson and Smelko are in charge of the nursing department, and the RNs, LPNs and certified nurses assistants (herein called "CNAs") all report to them.

The Employer operates three shifts, 24 hours per day, seven days per week. The DON and ADON work weekdays, but, along with other department heads, rotate being present at the facility on weekends. In addition, the DON and ADON have beepers and cell phones so that they can be reached at any time, if needed by the nursing department staff. The daylight shift, from 7:00 a.m. to 3:00 p.m., has one RN, one LPN and seven or eight CNAs on duty. The afternoon shift, from 3:00 p.m. until 11:00 p.m., has one RN, one or two LPNs, and five CNAs on duty. The night shift, from 11:00 p.m. until 7:00 a.m., has one RN, one LPN and five CNAs on duty.

The nurses' primary responsibilities involve direct patient care. They review patient charts from the previous shift, administer medications and treatments, escort patients, dress and change patients, speak by telephone to physicians, and answer call bells. The estimates of time spent by the nurses in direct patient care vary from about 80 percent to 90 percent of the workday. The remainder of the nurses' time is spent doing paperwork, preparing charts and reports and completing charts. As the nurses perform their own duties involved in patient care, they are assessing the patient care delivered by the CNAs and routinely make suggestions and corrections to that work as they proceed. When a change occurs in a patient's condition, the

[9] The parties stipulated, and I find, that the following individuals are supervisors within the meaning of Section 2(11) of the Act, inasmuch as they have the authority, inter alia, to hire, fire, discipline and/or direct the work of other employees: Judith Young, Administrator; Pat Wilgruber, Office Manager; Michele Ganoe, Resident Accounting Clerk/ Medical Records; Bill Dunn, Head of Maintenance; Kathy Wilson, DON; Mary Ann Smelko, ADON; Carla Somerville, Head of Social Services; Pam Davidson, RN Restorative; Martha Hardenbrook, RN Assessment Coordinator; Cynthia Smallwood (soon to be replaced by Chris Anderson), RN, CNA Trainer; Carol Price, Head of Dietary; Jorjann Williams, Head of Activities; and Irene Price, Head of Housekeeping.

assigned nurse notifies the DON or ADON. The nurses are paid hourly, as are most of the employees at the facility, including heads of departments.[10]

The CNAs provide basic personal care to the patients. In this respect, the CNAs bathe, feed, groom, dress and transport the patients throughout the facility. In addition, they keep the patients' rooms orderly and assist the nurses in administering treatments.

The record establishes that the nurses have no authority to hire, layoff, promote or transfer employees, or to effectively recommend such actions. Nonetheless, the Employer asserts that the RNs and LPNs are statutory supervisors by virtue of their responsibilities in the wings to which they are assigned. Specifically, the Employer contends that the nurses assign and direct the work of the CNAs, evaluate CNAs' performance, counsel and discipline CNAs, adjust CNAs' grievances, and recall CNAs to come in at times when they are not regularly scheduled and effectively recommend discipline, reward and discharge.

The nurses are not involved in the scheduling of CNAs for work. The hours and days worked by CNAs are determined by the DON or ADON on a biweekly basis. The nurses are given this schedule and then are responsible for slotting in a scheduled CNA to each of the predetermined assignments for the wing. The nurses have an outline provided by the ADON, which shows what duties[11] should be assigned, depending on the number of CNAs on duty at the time. Thus, there is an outline of assignments for five CNAs, six CNAs, and so forth. The outline consists of designated rooms, snack and ice dispersal duties, and predetermined lunch and break times. The nurses merely fill in the names of the CNAs scheduled for that particular shift into the slots in the outline, without taking into account individual CNA preferences and/or

[10] The record does not reflect the amount that the nurses are paid hourly.

[11] These assignment outlines were offered into evidence, along with some additional materials, in Joint Exhibits four, five and six by the Petitioner and the Employer, in a Joint Motion to Submit Additional Materials to the Record. The Intervenor was served with a copy of this Joint Motion, and filed no objection thereto. I hereby grant the Joint Motion and receive Joint Exhibits four, five and six into the record.

abilities.[12] These assignments are rotated every two weeks. Thus, by virtue of assigning a CNA to a particular slot, the nurse also assigns the CNA to care for designated patients, perform certain additional tasks, and take lunch and breaks at specified times.

If a CNA calls off, the LPN or RN on duty is responsible for finding a replacement, if possible. However, this is done by going down a list of CNAs by seniority who have volunteered to take overtime, and noting what shifts the CNA is willing to work in addition to his or her own shift. The list is kept at the nursing station. The nurse attempting to cover the call off has no authority to assign mandatory overtime. If no coverage can be found through volunteers, the nurse will either report the problem to the ADON or the DON to make a decision as to how to proceed, or will work short staffed for that shift. If a volunteer is found to cover the call off, then the CNA working overtime is slotted into the schedule in the place of the call off.

The nurses take no part in verifying or checking time records. The CNAs punch a time clock, and the nurses never see or review their timecards. Likewise, the nurses are not responsible for keeping any absentee or tardiness records for the CNAs. All such record keeping is handled through the office.

The nurses take part in the evaluation of CNAs. This is done for new employees[13] after 30, 60, 90 and 180 days, and then annually thereafter. Generally, there is a monthly staff meeting for the nurses, at which the RN assessment coordinator informs the nurses which of the CNAs are due for evaluations. At the end of the meeting, the nurses who work directly with the employee to be evaluated work together as a group to fill out the form. Sometimes the DON or the ADON take part in this group effort to complete the evaluation. The four page form has several categories[14], including quality of work, knowledge of job, appearance and

[12] The Employer's policy is that the schedule should not be affected by the patients' or the CNAs' preferences. The two week rotation is designed to avoid problems which might arise if patients and/or CNAs were able to request or avoid certain assignments.

[13] New CNAs are considered probationary employees, but the record does not reflect how long the probationary period lasts.

[14] Two other categories, attendance and promptness, and participation in continuing education, are not filled out by the nurses, since they do not keep records on these areas.

cleanliness, safety awareness, quantity of work, attitude, dependability, and social skills. The nurses then rate the CNA on a scale of one to five in each category. There are also lines below the rating boxes for comments by the nurses.

The nurses who take part in the evaluation sign the form on the last page. The form is then turned in to the nursing office.[15] There is a signature line for the department head, where administrator Judith Young generally signs the form. At some time after that, the DON or the ADON presents the form to the employee for the CNA's signature. The form is then placed in the CNA's personnel file. The evaluation has no effect on the employee's pay inasmuch as the Employer does not have merit raises. With probationary employees, a bad evaluation could result in an extension of the probationary period, but the nurses are not consulted in making such decisions. The nurses never see the form after they complete their part of the evaluation. On at least one occasion, the evaluation done by a nurse was changed without her knowledge after she turned it in; she only discovered the change when the next evaluation was required.

The Employer has a progressive discipline system which is set forth in its employee handbook. The handbook defines four groups of offenses by the degree of seriousness, with group four violations being the most serious offenses which can result in immediate termination. Group one violations begin with a verbal warning, then a written warning, suspension, and finally, termination. The first time an employee commits a group two offense, the discipline begins with a written warning, and the first group three offense begins with a suspension.

The nurses make written reports of problems that they encounter with the conduct of CNAs. Before a written report is made, the nurses generally try to handle the problem through oral counseling. This is done informally and is clearly not considered to be discipline, inasmuch as the handbook sets forth the progressive discipline policy with no mention of oral counseling.

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[15] The DON and the ADON have desks in the nursing office.

With respect to written discipline, the nurses fill out two types of forms, either an incident report or a Notice of Disciplinary Action, when they encounter problems. The incident report is not a form of discipline but rather is a means of informing the ADON and the DON of a problem which an LPN or an RN has encountered with a CNA. The nurses often utilize and leave this form for the DON and the ADON when the problem arises at a time when the department heads are not at the facility, i.e., in the evenings or on weekends. In this manner, the situation is documented by the nurse and left under the door of the nursing office. It is not shown to the CNA whose conduct is at issue, but merely records the facts of what occurred. The Notice of Disciplinary Action is a more formal document and is a part of the progressive discipline policy. The form is filled out by the nurse, informing the employee what level of discipline it records, i.e., verbal warning, written warning, and so forth. The form describes the date and nature of the incident, and is then presented to the CNA involved. There is a signature line for the nurse who writes up the form, for the CNA who is receiving the discipline, and for a nurse/ witness who is present when the form is presented to the CNA.

The nurses, however, do not have access to the employees' personnel files. Thus, the nurses do not know what level of discipline is appropriate for a particular CNA since they cannot see what, if any, prior discipline has been issued to that employee. As a result, the nurses report the incident, usually verbally, to either the DON or the ADON, who then instructs the nurse whether to write up the incident on the disciplinary notice, and, if so, what level of discipline to issue. Consequently, the nurses write up and issue the discipline only after being instructed to do so by the department heads.[16]

[16] Although the administrator, Judith Young, and the ADON, Mary Ann Smelko, both testified in a conclusory fashion that the nurses do not need prior approval before issuing discipline to CNAs, the testimony of the two nurses presented at the hearing, LPN Cheryl Leo and RN Susan Cipriani, indicates that the actual practice is for the nurse to contact the ADON or the DON before issuing any discipline. The fact that the nurses do not have access to personnel files tends to support the existence of this practice, since the nurses would be unable to know what level of discipline to issue unless the DON or the ADON instructed them in this respect.

In addition to documenting a situation in an incident report or completing the disciplinary form upon instructions from the department heads, the nurses assertedly have the authority to send an employee home for extreme and flagrant violations of the rules. However, there is no evidence that any employee has ever been sent home by a nurse. Further, it is noted that there is always a department head on duty or on call at the facility. One nurse testified that she would likely contact the DON or the ADON or other department head before attempting to suspend an employee.

The CNAs and other bargaining unit employees have a grievance procedure which is set forth in the collective-bargaining agreement between the Union and the Employer. The record is clear that the nurses take no part at all in the grievance procedure. That procedure has two steps, the first step involving the department head, i.e., the DON, and the second step involving the administrator. After the second step, the Union can request arbitration of the grievance.

As previously noted, the Employer contends, contrary to the Petitioner, that the nurses herein are supervisors within the meaning of the Act.[17] Specifically, the Employer asserts that the nurses have the authority, with regard to the CNAs, to assign and direct work, to evaluate, to discipline and suspend if necessary, to adjust grievances, to recall off duty employees to fill in when the facility is short staffed, and to effectively recommend reward, discipline and discharge.

[17] In its brief, the Employer cites several cases from U.S. Circuit Courts of Appeals, including National Labor Relations Board v. Attleboro Associates, Ltd., 176 F.3d 154 (3d Cir. 1999); Passavant Retirement & Health Center v. National Labor Relations Board, 149 F.3d 243 (3d Cir. 1998); Beverly California Corp. v. NLRB, 970 F.2d 1548 (6th Cir. 1992); and NLRB v. Christian Nursing Home, 825 F.2d 1076 (6th Cir. 1987), in support of its contention that the nurses herein are supervisors within the meaning of the Act. However, as noted by the Third Circuit in National Labor Relations Board v. Attleboro Associates, Ltd., a number of circuit courts have accepted the Board's analysis of the statute in determining supervisory status in cases similar to the instant matter. See Beverly Enterprises – Massachusetts, Inc. d/b/a East Village Nursing, 165 F.3d 960 (D.C. Cir. 1999); NLRB v. Grancare, Inc., 170 F.3d 662 (7th Cir. 1999); Beverly Enterprises d/b/a Lynwood Health Care Center, Minnesota, Inc. v. NLRB, 148 F.3d 1042 (8th Cir. 1998); Providence Alaska Medical Center v. NLRB, 121 F.3d 548 (9th Cir. 1997). Thus, the courts of appeals are not in agreement on this issue. It is the duty of the Board to establish a uniform labor policy, as distinct from a patchwork of geographically distinct rules. Manor West, Inc., 311 NLRB 655, 667 (1993). Therefore, the Board's precedents are controlling herein, notwithstanding seemingly conflicting rulings by certain Circuit Courts of Appeals. It is long established that Board precedent which has not been reversed by the Board or the U.S. Supreme Court is to be followed, even in light of contrary authority in the U.S. Courts of Appeals.

There is no assertion that the nurses have any authority to hire, transfer, layoff or promote CNAs.

To meet the statutory definition of a supervisor, an individual needs to possess only one of the specific criteria listed in Section 2(11) of the Act, or the authority to effectively recommend such action, so long as the performance of that function is not routine but requires the use of independent judgment. Providence Hospital, 320 NLRB 717 (1996), enfd. 121 F.3d 548 (9th Cir. 1997); Nymed, Inc., d/b/a Ten Broeck Commons, 320 NLRB 806, 809 (1996). This test has been traditionally used for supervisory status of all employees, and is also used to determine the supervisory status of health care professionals. The Board has defined the distinction between independent judgment and merely routine judgment as that between the "essence of professionalism" which requires the "exercise of expert judgment" on the one hand, and the "essence of supervision" which requires the "exercise of independent judgment" on the other. Providence Hospital, supra, at 730. The Board has long held that the party contending that an individual possesses supervisory status has the burden of proving it. The Ohio Masonic Home, Inc., 295 NLRB 390, 393 (1989); Bowne of Houston, Inc., 280 NLRB 1222, 1223 (1986).

The record does not support the conclusion, as urged by the Employer, that the nurses exercise independent judgment of the type necessary for a finding that they possess and exercise supervisory authority in the instant matter. Rather, the nurses, by virtue of their specialized training, have responsibilities to perform skilled patient care, including preparing and passing medications, updating charts and conferring with physicians. The work tasks of the nurses when directing the CNAs are all related to the quality of care. The Board has repeatedly emphasized that the direction of lower skilled nursing assistants in providing routine care is not supervision within the meaning of the Act. Illinois Veterans Home at Anna L.P., 323 NLRB 890 (1997); Rest Haven Living Center, Inc., d/b/a Rest Haven Nursing Home, 322 NLRB 210 (1996); Providence Hospital, supra, at 733.

With regard to the assignment of work duties, the nurses in the instant case merely insert the names of the CNAs assigned to the shift into a group of duties, depending on the

number of CNAs working on a given shift. The Board has held that work assignments made to equalize employees' work on a rotational or other rational basis are routine assignments.[18] Providence Hospital, supra, at 727; The Ohio Masonic Home, Inc., supra, at 395 (1989). Further, the Board has held that the authority to adjust work schedules in the event of an emergency or call off, to call in replacements[19] or request that an assistant work overtime, or to reschedule or postpone breaks, does not support a finding that a nurse possesses supervisory status.[20] Illinois Veterans Home at Anna L.P., supra, at 891; Rest Haven Nursing Home, supra, at 211; Providence Hospital, supra, at 733. The authority to make such scheduling changes in order to address patient needs is routine in nature and does not require the use of independent judgment. Providence Hospital, Id..

As noted, the Employer contends that the role of the nurses in evaluating CNAs is an indicia of their supervisory status. It is well established that the ability to evaluate employees, without more, is insufficient to establish supervisory authority. Beverly Enterprises, Alabama Inc.

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[18] In its brief, the Employer cites NLRB v. Attleboro Associates, Ltd., supra, in support of its contention that the assignment of work confers supervisory status on the nurses at issue herein. However, in that case, the Third Circuit relied on the dissenting opinion of Judge Noonan in Providence Alaska Medical Center v. NLRB, supra, wherein Judge Noonan described how the charge nurses therein considered the needs of the patients, the skills of the staff and the experience of the staff members available in making work assignments. In contrast, the record in the instant case is clear that the nurses do not consider the needs of the patients nor the skills and experience of the CNAs in making the assignments of work. To the contrary, the nurses merely slot in CNAs based only on the number of CNAs scheduled to work that particular shift, without regard for the individual CNA's skills or abilities. Thus, the instant case is distinguishable from the situation in NLRB v. Attleboro Associates, Ltd..

[19] In its brief, the Employer asserts that the nurses have the authority to recall nurses, describing the nurses' methods of calling in off-duty employees to fill in when the wing is short staffed as evidence of supervisory authority. However, in such cases, the list from which they call CNAs to fill in is a voluntary one, and their method of calling for substitute CNAs is routine and non-discretionary. The nurses have no authority to assign mandatory overtime and can only go down the list of volunteers, by seniority, to find substitutes. Should no volunteers be found, the nurses call the DON or the ADON to make a further decision in the situation. I do not find this calling of volunteers to substitute for an absent CNA to be indicative of supervisory status.

[20] There was some testimony at the hearing, without specific examples, of the nurses having the authority to allow a CNA to leave early in an emergency situation. The Board has found that such authority to allow an assistant to leave on an ad hoc basis, without evidence that the nurses have the general authority to grant time off, does not confer supervisory status. Beverly Enterprises, Alabama Inc. d/b/a Riverchase Health Care Center, 304 NLRB 861, 864 (1991).

d/b/a Riverchase Health Care Center, 304 NLRB 861 (1991); Passavant Health Center, 284 NLRB 887, 891 (1987), and cases cited therein. The Board has held that the completion of evaluations which do not directly lead to personnel actions affecting the wages or job status of the employee being evaluated does not confer supervisory status. Elmhurst Extended Care Facilities, Inc., 329 NLRB No. 55 (September 30, 1999); Ten Broeck Commons, supra, at 813.

In the instant case, the record evidence affirmatively establishes that the annual evaluations of CNAs have no effect on their wages or their job status, nor do the evaluations constitute effective recommendations for such actions.[21] Job status and wages for the CNAs are determined by the collective-bargaining agreement and the annual evaluations play no part in making any changes. Further, the record indicates that the evaluations of probationary employees are subject to review and modification by the ADON or the DON. The nurses make no recommendations regarding the retention or extension of probationary periods for probationary employees. Ten Broeck Commons, supra, at 813.

The Employer further contends, contrary to the Petitioner, that the nurses are supervisors in that they have the authority to discipline CNAs. In support of this contention, the Employer produced numerous disciplinary records signed and witnessed by nurses which were verbal and written warnings to CNAs. However, Section 2(11) requires an individual to use independent judgment in exercising authority either to discipline or to effectively recommend discipline. Illinois Veterans Home at Anna L.P., supra, at 891.

In the instant case, the testimony of the RN and LPN witnesses establishes that they do not independently write up such discipline. Inasmuch as the nurses have no access to personnel files, they cannot know what level of discipline is appropriate for a given employee. Thus, the nurses report the conduct at issue to the DON or the ADON, who instructs the nurse whether to issue discipline and, if so, at what level. In cases where the DON or the ADON are

[21] In its brief, the Employer states that, by evaluating the CNAs, the nurses have the authority to effectively recommend that the CNAs be rewarded. However, there is no evidence in the record to support this contention inasmuch as it is clear that the evaluations have no effect on an employee's pay or any other benefits.

not present, the nurses write up an incident report and leave it for the department heads, who then decide what further action should be taken. According to the nurse witnesses, they cannot and do not independently decide how to discipline a CNA. Thus, the nurses' role in discipline is mainly reportorial and the forms given to the CNAs are filled out by the nurses upon instructions from the department heads.[22] Such actions are not indicative of supervisory status within the meaning of the Act. [23] Illinois Veterans Home at Anna L.P., supra, at 891; Ten Broeck Commons, supra, at 812.

With respect to the authority of nurses to send home an employee for flagrant violations such as drunkenness or patient abuse, this is not an indication of supervisory status because no independent judgment is involved; the offenses are violations of the Employer's policies and speak for themselves. The Board has repeatedly held that responding to flagrant violations of the Employer's policies is insufficient to establish supervisory authority. Riverchase Health Care Center, supra, at 865; Manor West, Inc., 311 NLRB 655, 662 (1993). Moreover, while the administrator and the DON asserted at the hearing that the nurses possess such authority, the Employer did not present any examples or other supporting evidence of the exercise of this authority. The Board has held that conclusionary statements made in testimony, without supporting evidence, do not establish supervisory authority. Custom Mattress Manufacturing, Inc., 327 NLRB No. 30, slip op. 1-2 (October 30, 1998); Sears, Roebuck & Co., 304 NLRB 193 (1991).

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[22] In its brief, the Employer argues that a poor evaluation of an employee by the nurses can be used as a basis for terminating the employee. However, there was no evidence presented to indicate that the nurses have ever recommended that an employee be terminated, nor was there any evidence presented that any employee had ever been terminated as a result of a poor evaluation from the nurses. Consequently, I find no evidence to support the Employer's contention that the nurses effectively recommend discharge.

[23] In its brief, the Employer cites NLRB v. Attleboro Associates, Ltd., supra, in support of its assertion that the nurses are supervisors because they have the authority to issue discipline. However, unlike the situation in Attleboro, the nurses herein do not issue discipline without first being authorized by either the DON or the ADON. Thus, this case is distinguishable from Attleboro inasmuch as the nurses cannot independently issue discipline; they merely report a problem and then are instructed by the DON or the ADON as to whether or not to issue discipline, as well as what level of discipline to issue.

With regard to the adjustment of grievances, it is clear that the nurses play no role in the grievance procedure set forth in the collective-bargaining agreement. The Employer contends that the nurses adjust grievances by responding to informal complaints from the CNAs. These disputes involve such subjects as workloads, breaks, and so forth. The resolution of such minor conflicts is insufficient to establish supervisory status.[24] Illinois Veterans Home at Anna L.P., supra, at 891; The Ohio Masonic Home, Inc., supra, at 394.

Based on the above, and the record as a whole, I find that the RNs and LPNs do not exercise independent judgment in regard to any of the indicia establishing supervisory status under Section 2(11) of the Act. Accordingly, I find that the RNs and LPNs are not supervisors within the meaning of Section 2(11) of the Act.

As previously indicated, the unit sought by the Petitioner is composed of RNs and LPNs. However, this unit includes both professional and non-professional employees and Section 9(b)(1) of the Act specifically provides that the Board shall not decide that any unit is appropriate for collective-bargaining purposes if the unit includes both professional employees and non-professional employees "unless a majority of such professional employees vote for inclusion in such unit." In these circumstances, and pursuant to well-established Board law[25], I shall direct elections in two separate voting groups: The first professional group (voting group A) comprised of and limited to registered nurses, and the second non-professional group (voting group B) comprised of licensed practical nurses. The employees in the professional voting group will be asked two questions on their ballot: (1) Do you desire to be included with the non-professional employees in a unit composed of all registered nurses and licensed practical nurses employed by the Employer, but excluding all office clerical employees and guards, other professional

[24] Passavant Retirement & Health Center v. National Labor Relations Board, supra, relied upon by the Employer in its brief, involved the nurses' resolution of complaints which could ripen into grievances cognizable under the collective-bargaining agreement covering the CNAs. In contrast, in the instant case, the nurses are giving routine assignments and direction of work, rather than informally resolving disputes which would constitute contractual grievances.

[25] Sonotone Corporation, supra.

employees and supervisors as defined in the Act and all other employees, for the purposes of collective-bargaining? and (2) Do you wish to be represented for the purposes of collective bargaining by either Teamsters Local Union No. 261 a/w International Brotherhood of Teamsters, AFL-CIO or District 1199P, Service Employees International Union, AFL-CIO, CLC? If a majority of the professional registered nurses in voting group A vote "yes" to the first question indicating their wish to be included in a unit with the non-professional licensed practical nurses, they will be so included, and their votes on the second question will then be counted together with the votes of the non-professional licensed practical nurses in voting group B to decide the representative for the entire unit. If, on the other hand, a majority of the professional registered nurses in voting group A vote against inclusion, they will not be included with the non-professional licensed practical nurses. Their votes on the second question will then be separately counted to decide whether they want either the Petitioner or the Intervenor to represent them in a separate professional unit.

Accordingly, if a majority of the professional registered nurses vote for inclusion in a unit with non-professional licensed practical nurses, I find that the following employees of the Employer will constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time registered nurses and licensed practical nurses employed by the Employer at its Aliquippa, Pennsylvania, facility; excluding all office clerical employees and guards, other professional employees and supervisors as defined in the Act and all other employees.

If a majority of the professional registered nurses do not vote for inclusion in the unit with non-professional licensed practical nurses, I find that the following two groups of employees will constitute separate units appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

VOTING GROUP A:
All full-time and regular part-time registered nurses employed by the Employer at its Aliquippa, Pennsylvania, facility; excluding all office clerical employees and guards, other professional employees and supervisors as defined in the Act and all other employees.

VOTING GROUP B:
All full-time and regular part-time licensed practical nurses employed by the Employer at its Aliquippa, Pennsylvania, facility; excluding all office clerical employees and guards, other professional employees and supervisors as defined in the Act and all other employees.

DIRECTION OF ELECTION

An election by secret ballot will be conducted by the undersigned Regional Director among the employees in the voting groups set forth above at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.[26] Eligible to vote are those employees in the voting groups who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12

[26] Pursuant to Section l03.20 of the Board's Rules and Regulations, official Notices of Election shall be posted by the Employer in conspicuous places at least 3 full working days prior to l2:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed. The Board has interpreted Section 103.20(c) as requiring an employer to notify the Regional Office at least five (5) full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.

months before the election date and who have been permanently replaced.[27] With respect to voting group B, those eligible shall vote whether or not they desire to be represented for collective bargaining by Teamsters Local Union No. 261 a/w International Brotherhood of Teamsters, AFL-CIO or District 1199P, Service Employees International Union, AFL-CIO, CLC. In voting group A, the employees shall vote (1) Whether or not the professional employees in voting group A desire to be included with the non-professional employees in voting group B; and (2) whether or not they desire to be represented for collective bargaining purposes by Teamsters Local Union No. 261 a/w International Brotherhood of Teamsters, AFL-CIO or District 1199P, Service Employees International Union, AFL-CIO, CLC.

Dated at Pittsburgh, Pennsylvania, this 16th day of December 1999.

/s/Gerald Kobell
Gerald Kobell
Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD
Room 1501, 1000 Liberty Avenue
Pittsburgh, PA 15222

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[27] In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc. 156 NLRB 1236 (l966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (l969). Accordingly, it is hereby directed that the election eligibility list, containing the full names and addresses of all eligible voters, must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, Room l50l, l000 Liberty Avenue, Pittsburgh, PA l5222, on or before December 23, 1999. No extension of time to file this list may be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.